

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT
SYSTEMS ANTITRUST LITIGATION

MDL No. 2817
Case No. 18 C 864

This Document Relates to All Cases

Hon. Rebecca R. Pallmeyer
Magistrate Judge Jeffrey T. Gilbert

**MOTION FOR REAPPOINTMENT OF
DEREK T. HO OF KELLOGG HANSEN AS MDL CO-LEAD COUNSEL AND
PROFESSOR SAMUEL ISSACHAROFF AS MDL COORDINATING COUNSEL**

Movants Derek T. Ho of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. (“Kellogg Hansen”) and Professor Samuel Issacharoff of NYU Law School respectfully request that the Court reappoint them as MDL Co-Lead Counsel and MDL Coordinating Counsel, respectively. Mr. Ho and Professor Issacharoff have served in those roles since the inception of this MDL. Judge St. Eve first appointed Mr. Ho and Professor Issacharoff to one-year terms in April 2018. *See* Dkt. 123. Judge Dow then reappointed them to additional one-year terms in April 2019, 2020, 2021, and 2022. *See* Dkts. 644, 944, 1285, 1340, and 1343. Reynolds and CDK have stated they do not intend to file an opposition to the motion at this time.

Since the parties have not yet appeared before the Court since the case was reassigned to Chief Judge Pallmeyer, Movants briefly review their credentials below.

Based in Washington, D.C., Kellogg Hansen is one of the nation’s premier litigation boutiques.¹ Nearly one-third of its 36 partners, including Mr. Ho, clerked for Justices of the U.S. Supreme Court. The firm’s partners have been lead counsel in more than 100 federal and state trials and appeals and have argued 83 cases before the Supreme Court of the United States. Notable alumni include prominent members of the federal judiciary (including Associate Justice Neil M. Gorsuch and six federal appeals court or district judges); leading academics; and high-ranking government officials in both Republican and Democratic administrations.

In the field of antitrust, Kellogg Hansen is arguably *the* premier antitrust litigation firm in the country. It is no exaggeration that the firm’s cases have reshaped the substantive and procedural law of antitrust over the last two decades. *See, e.g., Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544

¹ Vault ranks Kellogg Hansen #2 among the nation’s litigation boutiques and #88 in the Vault Law 100. *See* <https://legacy.vault.com/company-profiles/law/kellogg-hansen-todd-figel-frederick-pllc>.

(2007); *Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438 (2009); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013).

At the trial level, Kellogg Hansen has served as lead trial counsel in obtaining the largest and second largest antitrust jury verdicts ever affirmed on appeal. *See In re Urethane Antitrust Litig.*, 768 F.3d 1245 (10th Cir. 2014) (affirming \$1.2 billion price-fixing verdict); *Conwood Co. v. United States Tobacco Co.*, 290 F.3d 768 (6th Cir. 2002) (affirming \$1.05 billion monopolization verdict), *cert. denied*, 537 U.S. 1148 (2003).

As for the cases in this MDL, they would not exist but for Kellogg Hansen. Starting in 2016, the firm conducted an extensive investigation – without the aid of any governmental agency or other private plaintiffs – into the Defendants’ collusive efforts to deny access to dealer data on their dealer management systems (or “DMSs”), and to exclude independent data integrators from the market. Based on that investigation, Kellogg Hansen developed the antitrust claims at the heart of this MDL. *See* Dkt. 91 (describing Kellogg Hansen’s work in developing these claims). It was only after Kellogg Hansen’s clients Motor Vehicle Software Corporation and Authenticom, Inc. sued Defendants (in February 2017 and May 2017, respectfully), and Authenticom, Inc. obtained a preliminary injunction in July 2017, that other plaintiffs asserted the claims developed by Kellogg Hansen and this MDL was formed.

Since the MDL’s creation, Mr. Ho and Kellogg Hansen have successfully litigated the cases in this MDL through motions to dismiss, fact and expert discovery, and *Daubert* motions. Summary judgment is fully briefed and remains pending. Along the way, Kellogg Hansen has obtained settlements on behalf of Authenticom, Inc. against both CDK and Reynolds (*see* Dkts. 1199, 1351); a settlement on behalf of Cox Automotive, Inc. *et al.* against CDK (*see* Dkt. 723);

and a settlement on behalf of Motor Vehicle Software Corporation against CDK and CVR (*see* Dkt. 778).

MDL Plaintiffs have been greatly assisted in their litigation by Professor Issacharoff, who is the Bonnie and Richard Reiss Professor of Constitutional Law at NYU Law School. Professor Issacharoff's expertise in MDL and class action procedure have provided invaluable assistance to MDL Plaintiffs and the Court. MDL Plaintiffs believe that Professor Issacharoff's assistance will continue to prove of great value, especially as the parties enter the class certification stage of the case after summary judgment is decided.

CONCLUSION

Kellogg Hansen respectfully requests that the Court reappoint Mr. Ho as MDL Co-Lead Counsel and Professor Issacharoff as MDL Coordinating Counsel.

Dated: April 14, 2023

Respectfully submitted,

/s/ Derek T. Ho

Derek T. Ho
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*MDL Co-Lead Counsel and
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CERTIFICATE OF SERVICE

I, Derek T. Ho, an attorney, hereby certify that on April 14, 2023, I caused a true and correct copy of the foregoing **MOTION FOR REAPPOINTMENT OF DEREK T. HO OF KELLOGG HANSEN AS MDL CO-LEAD COUNSEL AND PROFESSOR SAMUEL ISSACHAROFF AS MDL COORDINATING COUNSEL** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by email to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Derek T. Ho

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